Not Intended for Publication

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF VIRGINIA ROANOKE DIVISION

OBED RAHEEM HOYTE,)
Petitioner,) Case No. 7:06CV00078
v.) OPINION
UNITED STATES OF AMERICA,) By: James P. Jones) Chief United States District Judge
Respondent.)

Obed Raheem Hoyte, pro se.

The petitioner, a federal inmate proceeding pro se, has filed a Motion to Vacate, Set Aside, or Correct Sentence, pursuant to 28 U.S.C.A. § 2255 (West Supp. 2005). Upon review of the motion and court records, I find that the § 2255 motion must be dismissed as successive.

This court may consider a second or successive § 2255 motion only upon specific certification from the United States Court of Appeals for the Fourth Circuit that the claims in the motion meet certain criteria. *See* § 2255 para. 8. The petitioner previously filed a § 2255 motion, Case No. 7:94-CV-158, concerning the conviction and sentence he seeks to challenge in the instant petition. The court dismissed that case in May 1994 and the petitioner did not appeal. As the petitioner offers no

indication that he has obtained certification from the court of appeals to file a second or successive § 2255 motion, I must dismiss his current action without prejudice.¹ A separate Final Order will be entered herewith.

ENTER: February 10, 2006

/s/ JAMES P. JONES
Chief United States District Judge

Court records indicate that this action is also untimely filed, pursuant to § 2255 para. 6, and without merit, because it relies on *United States v. Booker*, 543 U.S. 220 (2005), a decision that does not apply retroactively to cases on collateral review. *See United States v. Morris*, 429 F.3d 65, 72 (4th Cir. 2005) (finding that *Booker* does not apply retroactively to cases that became final before issuance of the decision); *United States v. Cruz*, 423 F.3d 1119, 1121 (9th Cir. 2005) (citing other cases holding *Booker* not to be retroactive).